IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

OP.No. 10174 of 2003(J)

PETITIONER:

K.CHANDRASHEKARAN, ADVOCATE,
'ARADHYA', WEST KATTUSSERY, KATTUSSERY AMSOM,
ALATHUR TALUK.

BY ADV. SRI.P.VIJAYA BHANU
SRI.M.GEORGE THOMAS

RESPONDENTS:
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1. TAHSILDAR, TAHSILDAR OFFICE, ALATHUR.

2. VILLAGE OFFICER, ALATHUR.

3. ALATHUR GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, ALATHUR GRAMA
PANCHAYAT, ALATHUR.

R1 AND R2 BY GOVERNMENT PLEADER SRI. K.P. PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 17574 OF 2003 IN OP 10174 OF 2003

DISMISSED

19.11.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE PLAN APPROVED BY THE THIRD RESPONDENT.

EXT.P2 TRUE COPY OF THE PERMIT NO. 210/97-98 DATED 31.8.1998 ISSUED BY THE THIRD RESPONDENT.

EXT.P3 TRUE COPY OF THE BUILDING TAX RECEIPTS FOR THE YEAR 2002-03 DATED 23.1.2003 (NO. 81768) AND 21.3.20043 (NO. 81793)

EXT.P4 TRUE COPY OF THE ORDER A4/3188/03/390/01-(14) DATED 13.3.2003 OF THE TALUK OFFICE, ALATHUR.

EXT.P5 TRUE COPY OF THE REPRESENTATION DATED 10.3.2003 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 10174 OF 2003

Dated this the 19th day of November, 2007

JUDGMENT

Petitioner is challenging the demand of luxury tax in respect of his residential building. According to the petitioner, ground floor was constructed in 1982 and first floor was constructed as a separate unit in 1998. However, building tax was assessed treating the building as a new one in January, 2001. The tax assessed is paid by the petitioner without any contest. However, when demand of luxury tax came, petitioner challenged the same on the ground that building consists of two separate units and therefore the plinth area of both the buildings cannot be clubbed together for demanding luxury tax. Moreover, according to the petitioner, even if first floor is treated as addition to the main building assessable under Section 5(4) of the Act, since construction of the first floor was completed prior to 1.4.1999, no luxury tax could be demanded. Government Pleader on the other hand contended that luxury tax is demanded based on building tax paid by the petitioner without any contest. I do not think this argument can be

accepted because even if the petitioner paid building tax without any contest, petitioner is entitled to contest demand of luxury tax because it is a recurring liability. In the circumstances, and since the Tahsildar has not adjudicated on this issue, O.P. is disposed of granting opportunity to the petitioner to file a detailed objections giving proof of completion of construction of the first floor and particulars regarding separate building numbers assigned by the local authority, etc. It is upto the tahsildar to consider the same and if it is found correct, to allow the claim withdrawing the demand of luxury tax. It is open to the Tahsildar to conduct inspection of the building or get the building inspected by the Village Officer, to verify whether buildings are two separate units. If the access to the first floor is provided internally from the ground floor, then of course first floor should not be treated as a different building as it is only an addition to the ground floor. What is to be examined is whether the building is constructed in such a way that both constitute separate residential units having separate living room, bed rooms, bath room, kitchen, etc. Petitioner will produce a copy of this judgment before the Tahsildar for compliance. Tahsildar

is directed to issue fresh proceedings within one month from the date of production of a copy of this judgment. No recovery should be made against the petitioner for four months from now and thereafter recovery will be based on fresh demand if any raised against the petitioner.

(C.N. RAMACHANDRAN NAIR)
Judge